BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Truth-in-Billing and Billing Format	)	
	)	CG Docket No. 04-208
	)	
National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Monthly Line Items and Surcharges Imposed by Telecommunications Carriers	)	

COMMENTS OF THE MINNESOTA DEPARTMENT OF COMMERCE IN SUPPORT OF NASUCA'S PETITION FOR DECLARATORY RULING

MINNESOTA DEPARTMENT
OF COMMERCE

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The Minnesota Department of Commerce ("MDOC") respectfully submits these comments in support of the National Association of State Utility Consumer Advocates' (NASUCA) Petition for a Declaratory Ruling with respect to Truth-in-Billing and Billing Format.

I. INTRODUCTION

Beginning in the early 1980's, the Commission has steadily deregulated interstate interexchange services to enable telephone consumers to do what they previously could not—select the long distance carrier of their choice.[1] With this choice has followed innovative products, packages, and rates intended for the benefit of the consumer.

Unfortunately, competition in the long distance market has also produced an overabundance of fees, surcharges, or other line items that are not mandated by any regulatory body but appear to be. The timing of these fees is curious: carriers argue that these fees are needed to recover costs of complying with telecom regulation, at a time when the telecom industry has become increasingly *de*regulated.

MDOC does not take issue with the Commission's decision to deregulate interexchange service. However, because carriers have chosen to continue introducing these misleading fees, NASUCA has wisely requested that the use of these fees be limited. These fees make it nearly impossible for customers to comparison shop for telecommunications service. Carriers that choose to honestly disclose their rates are penalized when they lose consumers to carriers who promise lower rates but pad their bills with extra fees. The allowance of these fees frustrates the efforts

[1] MDOC's jurisdiction does not extend to wireless carriers, and therefore these comments are limited to the discussion of NASUCA's petition as it applies to long distance carriers.

of the Commission and states to maintain competition in the long distance market, because a competitive market depends on consumers being able to receive clear price information.

MDOC supports NASUCA's petition for declaratory ruling in this docket. MDOC has both participated in and initiated proceedings before the Minnesota Commission addressing misleading charges that thwart consumers' ability to choose carriers. The Commission should recognize that states are in some cases the appropriate venues in which to handle misleading surcharges and fees. Whatever decision the Commission makes in this docket, it should recognize that states play an important role in enforcing consumer protections.

II. THE SCOPE OF THE NASUCA PETITION

The Commission should grant NASUCA's petition as it relates to misleading surcharges assessed on interstate telecommunications service. Because the Commission retains jurisdiction over interstate long distance service, the Commission is the only regulatory agency with the ability to act upon the NASUCA petition. Whatever action the Commission takes in this docket, however, it should define the scope of its decision as it relates to the role states play in enforcing their consumer protection laws.

A. STATES' ROLES IN CORRECTING MISLEADING SURCHARGES

States can, and do, take action to prevent carriers from improperly disclosing or not disclosing charges to customers.[2] One example in Minnesota is illustrated below in Section III. However,

[2] Minnesota Statutes §237.662 requires long distance carriers in Minnesota to disclose all of its rates and fees when soliciting a customer for their service, including minimum volume requirements, fixed flat fees, service charges, surcharges, termination charges, or other non-
(Footnote Continued on Next Page)

state jurisdiction is limited concerning the practices complained of in the NASUCA petition: interexchange and wireless carriers. To the extent that states do not have the jurisdiction to obtain relief for the customers harmed by these practices, the Commission should step in and prohibit these misleading charges. In those instances in which states do have the ability to rectify a problem on behalf of consumers, no Commission action is necessary.

1. The Commission's Detariffing Order Establishes that the Commission, and not the States, Must Decide Whether Interstate Surcharges Are Lawful.

State regulation of interstate, interexchange services have historically been preempted by the "filed-rate" doctrine. In 1996, when the Commission detariffed interstate interexchange services, it clarified that while the filed-rate doctrine may no longer apply, the Communications Act continued to govern whether these interstate services, rates, and practices were lawful.[3] The Commission made this clarification in response to a request by AT&T, who was concerned that the detariffing of long distance services would lead to the belief that state law could govern the lawfulness of interstate rates. The Commission clarified that only state regulations regarding the "legal relationship between the carrier and the consumer"[4] could apply to interstate interexchange service. Because the NASUCA petition in the instant docket relates to the lawfulness of these surcharges and fees, not the legal relationship between a carrier and its customers, the Commission is the appropriate body to resolve the petition.

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service-specific charges. This information must also be provided in writing to the customer within seven (7) days after the customer selects the carrier. See Minn. Stat. §237.662, subd. 2.

[3] In the Matter of Policy and Rules Governing the Interstate, Interexchange Marketplace, CC Docket No. 96-61, Released 8/20/1997, para 77.

[4] Id at para 77.

A decision in NASUCA's favor would only apply to the lawfulness of fees tied to interstate service by interexchange carriers. However, it would assist states in deciding whether similar intrastate charges should be questioned and prohibited.

2. The Commission intended to continue reviewing interexchange carrier practices, including billing practices.

NASUCA cites several Commission orders in which the Commission stated its intention to continue reviewing fees and billing practices by interexchange carriers. Another order in which the Commission reiterated this intent was its Detariffing Orders. The Commission acknowledged that while a competitive market could provide protection against discrimination or other unfair practices, "even in a competitive market, nondominant interexchange carriers might not provide complete information concerning all of their interstate, domestic, interexchange service offerings to all consumers…"[5]

The Commission therefore committed itself to continuing to review carriers' practices:

> [W]e will continue to examine legal, and where appropriate, policy matters to give full effect to the requirements that a carrier's rates, terms, and conditions are just, reasonable, and not unreasonably discriminatory, as well as the requirements of our rules and orders.[6]

The NASUCA petition provides the Commission the perfect opportunity to meet its commitment.

[5] In the Matter of Policy and Rules Governing the Interstate, Interexchange Marketplace, CC Docket No. 96-61, Released 10/31/96, para 25.
[6] Id at para. 26.

III. A RULING ON NASUCA'S PETITION WOULD GRANT CLARITY TO CONSUMERS THAT IS LONG OVERDUE.

The harm NASUCA complains of in its petition is not hypothetical, but concrete and specific. State agencies, and likely the Commission itself, field numerous inquiries about billing questions, and about these types of fees in particular. The greater harm, however, is that many consumers do not contact anyone at all about these fees, believing these are government-mandated fees that are unavoidable.

A. A CASE IN POINT: A $20 MONTHLY SERVICE FEE DISGUISED AS A TAX

NASUCA's petition cites many examples of carriers imposing surcharges that are labeled misleadingly, to appear as if they are mandatory taxes, but in reality are pocketed by the carrier. Most of the examples cited by NASUCA involved surcharges amounting to a few dollars or less. Some carriers do not stop at a few dollars: in once instance, a long distance carrier operating in Minnesota began assessing a $20 monthly service fee which appeared on consumers' bills and could be confused as a tax.

In approximately July 2002, MDOC began receiving complaints from long distance customers of a company with an unusually large amount of "tax" was being assessed on their bills. One such customer even created a spreadsheet of his long distance charges and found that the "taxes" imposed by the company amounted to 33% of his total bill, a significant hike from those imposed by his previous carrier. He contacted the company repeatedly and received no explanation as to why it imposed "taxes" at a higher rate than some of its competitors. In another complaint with the same company, the customer made two (2) calls for the entire month of August 2002---a total of $.60 in long distance usage charges. Yet his long distance bill

totaled $25.45, which included $21.99 for "Taxes and Surcharges." The actual nature of this line item was only discovered after MDOC issued Information Requests and found that $20 of the $21.99 labeled as "taxes" was due to a monthly service fee. This fee was not otherwise disclosed to the customer—not even at the time the customer signed up for service. The effect of this nondisclosure was to imply to the customer that taxes comprised 79% of his long distance bill.

Attached to these comments is a copy of the customer's bill in question.

In this case, MDOC initiated regulatory action against the company after the two parties could not reach agreement on disclosing the $20 monthly service fee. The company argued that states did not have jurisdiction to require truth-in-billing or other disclosures. A settlement was eventually reached in which the company agreed to change the description of the line item on its bill, but did not agree to stop charging this monthly service fee.[7] It should be noted that the company's initial response to the MDOC's complaint was that states lacked the jurisdiction to regulate truth-in-billing matters.

B. THE NEED FOR COMMISSION INTERVENTION ON TRUTH-IN-BILLING

1. The source of most rate information for customers is carrier bills.

In the above instance, the settlement reached by MDOC provided some relief to consumers, although they waited two years for resolution. Part of the delay in resolution, in MDOC's opinion, was the lack of guidance as to appropriateness of these fees, particularly as to how these fees should be labeled on bills.

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[7] This monthly service fee is now disclosed on the company's website at http://www.nos.com/services_tariffs_view.asp?Filename=DOM_FED_051004.pdf. The
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The Commission has long recognized that most consumers receive price information largely via their bills:

> In the absence of tariffs, customers will still receive rate information in the same manner they always have, *through the billing process*.[8]

The importance of strong truth-in-billing requirements cannot be overstated. A clear bill is the last line of defense against misleading carrier practices: if a carrier misrepresents its rates to get a consumer to switch to its service, the consumer will be made aware of the misrepresentation once s/he receives her first bill, and can choose another carrier. Clear bills enable consumers to make their own choices with respect to telecommunications service, and prevent them from having to rely on governmental agencies to assist them.

2. The Commission should take action that allows customers to understand what they are paying for.

Truth-in-billing allows customers to understand exactly what they are paying for. If a carrier's rates are not satisfactory to a customer, a customer can use his or her bill to compare the rates of other carriers. Misleading fees on the bill prevent a customer from comparison shopping. The customer assumes the fees are unavoidable and will be charged regardless of the carrier s/he chooses.

The lack of any specific Commission regulations regarding truth-in-billing has both allowed carriers to introduce extra fees on their bills while simultaneously leading consumers to believe

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document in which the fee is disclosed is 112 pages. The monthly service fee is disclosed on page 111 (accessed June 18, 2004).

[8] Detariffing order, para. 25.

that these fees are taxes. To compound the problem, all carriers do not use the same labels for these fees.

There are different courses of action the Commission can take. The Commission could prohibit all such fees, as requested by NASUCA. In the alternative, if the Commission does not desire to prohibit these fees, it could create standard labels and explanations for these fees, to the extent they are interstate.

The simplest solution is for the Commission to prohibit these fees. Prohibiting these fees treats all carriers equally by placing them on a level playing field. Carriers could still charge whatever rates they choose, as long as they are included in the per-minute rate or the monthly service fee, both of which are disclosed as revenues pocketed by the carrier. Regulatory agencies such as the Commission will not need to devote as many resources to handling complaints and questions about these fees. Consumers will have confidence that they will better understand their bills from their chosen carrier.

V. CONCLUSION

Because carriers are increasingly assessing fees that lead consumers to believe they are government-mandated and thus unavoidable, consumers are losing their ability to take advantage of competition and compare prices. The petition filed by NASUCA proposes a resolution that will eliminate these misleading fees, reduce consumers' reliance on regulatory agencies for explanations of these fees, and return all carriers to a level playing field. The Commission should grant the petition filed by NASUCA. In granting the petition, the Commission should also clarify the role that states continue to play in enforcing consumer protection requirements on carriers.

Dated: July 14, 2004

Respectfully submitted,

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